



04 SEP 2007

Benjamin Aaron Adler
ADLER & ASSOCIATES
8011 Candle Lane
Houston TX 77071

In re Application of
MOHAMADZADEH et al.
Application No.: 10/552,153
PCT No.: PCT/US04/10832
Int. Filing Date: 08 April 2004
Priority Date: 09 April 2003
Attorney's Docket No.: D6486
For: DENDRITIC CELL BINDING PROTEINS AND
USES THEREOF

DECISION ON PETITION

UNDER 37 CFR 1.181

This is in response to applicant's "Petition for Withdrawal of Holding of Abandonment under 37 CFR 1.181(a)" based upon a failure to receive an Office Action filed in the United States Patent and Trademark Office (USPTO) on 02 July 2007 alleging that applicant did not receive the Notification of Missing Requirements mailed on 05 June 2006.

BACKGROUND

A review of the application file reveals that the NOTIFICATION OF MISSING REQUIREMENTS was mailed by the USPTO on 05 June 2006. The notification indicated that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required. Applicant was given two months to respond to the Notification or until 17 August 2002 with extensions of time (up to 5 months) available under 37 CFR 1.136(a). No response to the Notification of Missing Requirements was received, and thus, the application is held to be **ABANDONED** as of midnight on 05 January 2007. No Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant.

On 02 July 2007, applicant filed the instant petition to withdraw the holding of abandonment.

DISCUSSION

In order to establish that papers were not received, a petition under 37 CFR 1.181 with a proper showing is required. As set forth in the Official Gazette at 1156 OG 53, the petition must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement). No petition fee is required.

Petitioner has satisfied Item (1) with the statement "The Notification of Missing

Requirements was never received for the instant application.”. Practitioner did not make the statement attesting that a search of the file jacket and docket records indicated that the Office action was not received. Thus, Item 2 is not yet satisfied.

With regard to Item (3), applicant submitted a copy of “selected pages of the attorney docket (Exhibit A) for July -December 2006... [and] a partial example of a docketed Response to Missing Requirements deadlines for January- March 2006 (Exhibit B)”. Counsel’s indication that “selected pages” and “a partial example” of the attorney docket record is not sufficient.

The computer docket record relied upon by counsel establishes only that the Notification was not docketed in connection with the application’s docket record, not that such Notification was not received. It is for this reason that the Office generally requires, as the appropriate docket record for establishing nonreceipt of an Office communication, a record of all USPTO responses due on the due date for reply to the communication at issue (i.e., a listing of all replies due in the USPTO on 05 August 2006). MPEP 711.03(c)IA. Counsel does not indicate that the records submitted represent the docket record where the non-received office action would have been entered had it been received.

The appropriate docket record for establishing nonreceipt of an Office communication, is the record of all USPTO responses due on the due date for reply to the communication at issue (i.e., a listing of all replies due in the USPTO on 05 August 2006).

Thus, applicant has not provided Practitioner’s statement attesting that “a search of the file jacket and docket records indicates that the Office action was not received” and has not provided the proper showing necessary to withdraw the holding of abandonment. The petition may not be properly granted at this time.


CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

The application remains ABANDONED.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


Cynthia M. Kratz
Attorney Advisor
Office of PCT Legal Administration

Telephone: (571) 272-3286
Facsimile: (571) 272-0459